1949 K

File No. Ports II/49(1)

K

Legal DEPARTMENT

B BRANCH

Subject:— Notifications under the Indian Ports Act, 1908.

E
P-5
Law

File No. Ports II/49(1)

Std. Sectt. Slip 24 B e.

136-B

Legal Department.

In place of the Revenue Department draft at page 35 ante a revised draft notification is sent herewith.

Id/- J.R.D.

8-3

Additional Secretary to Government

U.R. to R.D.,No. 2697, dated the 9th March 1949.

PSM. 4-6
4C
4/6

NOTIFICATION.

Revenue Departmer

Bombay Castle, 1949.

Indian Ports Act, 1908.

No. :- In exercise of the powers conferred by section 5 of the Indian Ports Act, 1908 (XV of 1908), the Government of Bombay is pleased to amend Government Notification in the Revenue Department No. 2395/33, dated the 21st August 1934 as follows:- namely:-

In the said notification under the heading "Southern Group of Ports", for the entries 20 and 21 relating to the ports of Dabhol and Borya respectively, the following shall be substituted namely:-

"20.	Dabhol	The cost line one mile seaward from the north-western exterraity of the Kolthra village as far as Wanosi, thence a line drawn direct to a point on the shore due west of Anjanwel Light House and thence following the coast one mile seaward to the northernmost point of Guhagar village, the shores, creeks and banks within these limits as far as nevigable.
"21.	Borya	The coast line one mile seaward from the Southernmost point of Palshet village round Borya Head-land to its southernmost point, thence a line drawn direct to the north-west extremi of promontory south of Sakhari and the coast line one mile seaward to the south bank of Narwan creek, the banks and creeks within these limits as far as navigable.".

By order of the Governor of Bombay,

Secretary to Government.

Legal Department.

Notification at p. 5 under the Indian Ports Act:- The proposal is to extend the Indian Ports Act, 1908, to the port of Palshet. It will suffice therefore if a notification under section 4(a) of the said Act is issued and under sub-section (2) of the said section the limits of the new port are defined. A revised draft notification in place of the R.D., draft at p. 5 is sent herewith.

2. Notification at p. 7 under the Bombay Landing and Wharfage Act, 1882:- Under section 5 of the Act it is necessary to define the limits of the port to which the Act is extended under section 2 only when such limits have not been defined under the Indian Ports Act, 1875 (now Act XV of 1908). As the limits of the port Palshet are proposed to be defined under the Indian Ports Act it is sufficient if a foot note is added to the main notification as shown in the draft. A revised draft notification is sent herewith.

Id/- J.R.D.

9-3

Additional Secretary to Government

U.R. to R.D., No. 2693, dated the 9th March 1949.

PSM. 4-6
4C

Legal Department.

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9-3

Additional Secretary to Government

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PSM. 4-6
4C

Legal Department.

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9-3

Additional Secretary to Government.

U.R. to R.D., No. 2693, dated the 9th March 1949.

PSM. 4-6
4C

egal Department.

lause (iii) of paragraph 3 of the Baroda
lcation of Laws) Order, 1949, it is provided
actments (including rules) specified in
(to the Order) and all other enactments not
der paragraph 5 and the notifications, orders
les and by-laws issued, made or prescribed
and in force in the Baroda State immediately
coming into force of the Order shall conti-
e in the territories of the said State and
application until altered, replealed or ame-
ompetent authority. The Okha Port Rules and
ntitled the Bandaro Sambandhi Nibandh)
the rules were framed were in force in
diately before the coming into force of
State (Application of Laws) Order, 1949 and
ot repealed under paragraph 5 of the said
the Act and rules therefore continued in
the aforesaid Order came into force. Even
omplete merger of the Baroda State the said
have remained in force in the areas formerly
n the Baroda State by virtue of paragraph 4
tion No. S.O.25, dated the 27th July 1949,
rnment of India in the Ministry of Law.
ugust the scale of tolls etc. under the
ules can be altered or amended by the com-
nority under the Rules.

Rules 12 and 13 of the Okha Port Rules autho-
kha Harbour Board to frame scales of tolls,
rges, etc., for the matters specified therein
of the said Rules provides that every scale
the Board under rule 12 or 13 shall be sub-
Government for sanction, and when so sanct-
published in the Adnya Patrika, shall have

In clause (iii) of paragraph 3 of the Baroda State (Application of Laws) Order, 1949, it is provided that the enactments (including rules) specified in Schedule II (to the Order) and all other enactments not repealed under paragraph 5 and the notifications, orders, schemes, rules and by-laws issued, made or prescribed thereunder and in force in the Baroda State immediately before the coming into force of the Order shall continue in force in the territories of the said State and shall have application until altered, replealed or amended by a competent authority. The Okha Port Rules and the Act (edntitled the Bandaro Sambandhi Nibandh) under which the rules were framed were in force in Baroda immediately before the coming into force of the Baroda State (Application of Laws) Order, 1949 and they were not repealed under paragraph 5 of the said Order. Both the Act and rules therefore continued in force after the aforesaid Order came into force. Even after the complete merger of the Baroda State the said enactments have remained in force in the areas formerly comprised in the Baroda State by virtue of paragraph 4 of Notification No. S.O.25, dated the 27th July 1949, of the Government of India in the Ministry of Law. After 1st August the scale of tolls etc. under the Okha Port Rules can be altered or amended by the competent authority under the Rules.

2. Rules 12 and 13 of the Okha Port Rules authorise the Okha Harbour Board to frame scales of tolls, rates, charges, etc., for the matters specified therein. Rule 14(1) of the said Rules provides that every scale framed by the Board under rule 12 or 13 shall be submitted to Government for sanction, and when so sanctioned and published in the Adnya Patrika, shall have

the force of Law, and subject to the like sanction and publication, may from time to time be amended or added to by the Board. It would appear from these provisions that in order to give effect to any amendment to the scales framed by the Board the following requirements must be fulfilled. Firstly, the Board should make the proposal to amend the scales and submit the same to Government for sanction. Secondly, Government should sanction the amendment proposed. And thirdly the amendment as sanctioned by Government should be published by the Board in the Adnya Patrika. It is understood that the Board is no longer in existence and that the proposal in the present case has not come from the board . In the absence of any proposal made by the Board itself, no sanction can be given by Government under rule 14(1). Under para. 3(iii) of the Baroda State (Application of Laws) Order, 1949 the powers of the Board under rules 12 and 13 of the Okha Port Rules cannot be deemed to have devolved on the Government of Bombay. The proposal made in the present case that the Government of Bombay should revise the scales does not, therefore, seem to be legally feasible. Under these circumstances the only course open to the Government of Bombay is to re-constitute the Board under rule 4 of the Okha Port Rules.

Id/- J.R.D.

20-8

Additional Secretary to Government.

U.R. to R.D.,No. 9393, dated the 20th August 1949.

PSM. 4-6
4C

Legal Department.

Rules 12 and 13 of the Okha Port Rules do not specifically provide for levying a surcharge on the existing charges levied under the rules and it is doubtful whether such levy will be strictly legal/. The proper method is to increase the existing charges by substituting the new charges in the appropriate columns under Schedules A and B under which the charges have been specified. Moreover the increase of rates generally by 33 1/3 p.c. may result in collecting the charges in fraction of a pie unless the amount so arrived at is rounded off.

Secondly the provision referred to at 'A' and at 'B' at p. 13 ante will have to be embodied in the two Schedules referred to at the appropriate place in modification of the existing provision on the subject.

The revised draft notification shows in what respect the Schedules 'A ' and 'B' referred to above will have to be modified. When the Schedules A and B are amended as shown in the draft supplied, they would show at a glance the obligations and liabilities of the public as regards the payment of tolls, dues, rents, rates and charges under the rules.

A revised draft Notification in respect of the constitution of the Okha Harbour Board is also sent herewith.

Id/- J.R.D.

23-9

Additional Secretary to Government.

U.R. to R.D.,No. 10776, dated the 26th September 1949.

PSM. 4-6 4C